

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 16-56057; 16-56287

SKIDMORE ET AL.

*Michael Skidmore, Trustee for the
Randy Craig Wolfe Trust
Plaintiff-Appellant/Cross Appellee*
v.

LED ZEPPELIN *ET AL.*

Defendants-Appellees

and

WARNER/CHAPPELL MUSIC, INC.

Defendant, Cross Appellant

SKIDMORE'S MOTION TO EXCEED LENGTH LIMITS

(Music copyright infringement, on appeal from the final Order dated June 23, 2016 of the Honorable R. Gary Klausner, of the United States District Court for the Central District of California. The case was docketed in the Central District at 15-cv-03462)

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Plaintiff Michael Skidmore (Appellant and Cross-Appellee), as Trustee for the Randy Craig Wolfe Trust (“Skidmore” or “Plaintiff”) respectfully seeks leave of Court to file an extended brief in excess of the 14,000 word limit imposed by Federal Rule of Appellate Procedure, Ninth Circuit Rule 28.1-1(b). Ninth Circuit Rule 32-2 permits a party to request leave to file an extended brief if that party shows diligence and substantial need.

By and through counsel and counsel’s declaration, Plaintiff-Appellant represents that diligence was made in attempting to comply with the 14,000 word limit; however, there is a substantial need to allow an extended brief. See Declaration of Francis Malofiy.

Pursuant to the Circuit Advisory Committee Note to Rule 27-1, counsel for the Plaintiff-Appellant informed opposing counsel of its intent to file this Motion on August 14, 2017. Counsel for Defendants responded that they take no position on the motion to extend the length of Plaintiff’s brief and instead will defer to the Court.

Respectfully submitted,

/s/ Francis Malofiy

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August 16, 2017

CERTIFICATE OF FILING AND SERVICE

Counsel was served via CM/ECF which constitutes service, pursuant to Fed. R. App. P. 25(c)(2) and Ninth Circuit Rule 25-5(g), to all registered CM/ECF users:

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Respectfully submitted,

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DECLARATION OF FRANCIS MALOFIY

I, Francis Malofiy, attorney for Plaintiff Michael Skidmore (Appellant and Cross-Appellee), as Trustee for the Randy Craig Wolfe Trust, declare and state that I have personal knowledge of the facts recited below:

1. Counsel diligently attempted to comply with the 14,000 word limit imposed by Federal Rule of Appellate Procedure, Ninth Circuit Rule 28.1-1.
2. Given the number of issues on appeal and the complexity of effectively presenting Plaintiff's arguments to this Court and establishing enough facts and supporting evidence of the Record to support the arguments, Counsel was unable to comply with the 14,000 word limit.
3. In this combined brief, Plaintiff was required to brief both his reply in support of his appeal and his response to Defendant Warner/Chappell's appeal from the denial of costs and fees.
4. In the reply brief, Plaintiff was required to respond to 11 discrete issues raised in Defendants' response brief—many of which also had sub-issues.
5. Moreover, Defendants' response brief made numerous unsupportable claims of waiver. Although the claims of waiver are without merit, Plaintiff was required to expend approximately 3,107 words rebutting these arguments.

6. Plaintiff was also required to respond to Defendant's costs and fees appeal. Counsel has cut thousands of words from his response to Defendant's opening brief in consideration of the court's length restrictions.

7. After diligence was taken to comply with the 14,000 word limit and after all efforts were made to comply including, edits, revisions, deletions, summations, and citations, Counsel could not reduce the word count to less than 17,746, which is the word count of Plaintiff's Combined Reply Brief and Opening Brief Responding to Defendant's Costs and Fees Appeal.

8. Plaintiff Skidmore respectfully requests that this Honorable Court grant leave to permit the filing of his Combined Brief in excess of the 14,000 word limit.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th, Day of August 2017, in Media, Pennsylvania.

Respectfully submitted,

/s/ Francis Malofiy

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August 16, 2017

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28-1.1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 16-56057

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

- ☐ This brief complies with the length limits permitted by Ninth Circuit Rule 28-1.1.
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-1.
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b).
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1) ☐ separately represented parties; (2) ☐ a party or parties filing a single brief in response to multiple briefs; or (3) ☐ a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the longer length limit authorized by court order dated
The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.
- ☒ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is 17,746 words or pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4.
The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or
Unrepresented Litigant

/s/ Francis Malofiy

Date

8/16/2017

("s/" plus typed name is acceptable for electronically-filed documents)